

DOCKET FILE COPY ORIGINAL

RECEIVED

BEFORE THE

JUL 8 1994

FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

WASHINGTON, D.C. 20554

In The Matter Of)

Amendment of Section 73.202(b))
Table of FM Allotments)
Coolidge and Gilbert,)
Arizona)

MM Docket No. _____
RM _____

To: The Acting Chief
Allocations Branch

**PETITION FOR RECONSIDERATION AND REINSTATEMENT NUNC PRO
TUNC OF PETITION FOR RULE MAKING AND REQUEST FOR MODIFICATION OF
LICENSE**

Rainbow Broadcasting, Inc. ("Rainbow"), licensee of Station KAZR(FM), Coolidge, Arizona ("Station"), by its attorneys and pursuant to Section 1.106 of the Commission's Rules, hereby respectfully petitions for reconsideration of the action of the Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau, rejecting Rainbow's Petition for Rule Making and Request for Modification of License, filed March 24, 1994 ("Rulemaking Petition").¹ Rainbow further requests that upon grant of the Petition for Reconsideration that the Rulemaking Petition be reinstated nunc pro tunc. In support thereof, Rainbow states as follows.

1. By the Rulemaking Petition, Rainbow asked the Commission

¹ The Petition was initially filed by FM 103 Broadcasting, Inc., which was then the licensee of Station KAZR(FM). Rainbow consummated the assignment of license on April 14, 1994 (File No. BALH-940113GJ) and advised the Commission, by an Erratum, filed on April 18, 1994, that it was adopting the Petition as its own.

No. of Copies rec'd
LSI A B C D E
2149

045

to propose the amendment of the FM Table of Allotments so that FM Channel 280 would be allotted to Gilbert, Arizona, as a Class C2 facility, in place of Coolidge, Arizona, as a Class A facility, and that the license for the Station would be modified to operate on Channel 280C2 at Gilbert. In connection therewith, Rainbow established that Gilbert would obtain its first aural transmission service, while Coolidge would continue to have a local aural transmission service. It was further shown that the addition of a first transmission service to a community (Gilbert) with a greater and faster growing population would serve the Commission's allotment goals under Section 307(b) of the Communications Act of 1934, as amended.

2. In rejecting the request for commencement of a rulemaking proceeding, the Acting Chief stated that Gilbert is located within the Phoenix, Arizona Urbanized Area and, therefore, any rulemaking request must meet the standards of Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7097 (1990) ("Community Modifications II"). In particular, the Acting Chief argued that the criteria detailed in RKO General, Inc. ("KFRC"), 5 FCC Rcd 3222 (1990) and Faye & Richard Tuck, Inc., 65 RR2d 402 (1988), must be satisfied in this instance. Thus, the Acting Chief stated there was no basis to hold that Gilbert was entitled to a first service preference or, alternatively, should be considered part of the Phoenix Urbanized Area for purposes of determining available aural services.

3. Rainbow disagrees with the conclusions of the Acting

relative size of the requested community and the central city, and the interdependence of the requested community with the central city. As we will show, infra, each of the criteria supports the allotment of the channel to Gilbert.

5. Turning first to the issue of signal population coverage, Exhibit A analyzes the predicted coverage of the Station should it be allotted to Gilbert. Unlike KFRC and Tuck, the proposed coverage of the Station in this matter will not result in a commonality of coverage with the broadcast stations allotted to the central city. The predominant sites for broadcast transmission facilities is the antenna farms at South Mountain and Mummy Mountain. Due to site restrictions and the location of Gilbert at a substantial distance to the southeast of Phoenix, the transmitter for the Station cannot be located at these antenna farms. Consequently, the Station will not be able to place a 70 dBu signal over any part of the city of Phoenix or provide the same broadcast service as the FM radio stations licensed to Phoenix. In fact, even the predicted 60 dBu contour does not encompass the entire Phoenix Urbanized Area.

6. These facts clearly distinguish this case from those previously decided. In KFRC, all the applicants had proposed identical broadcast transmission facilities with service over an extensive area. Likewise, in Eatonton and Sandy Springs, Georgia and Anniston and Linesville, Alabama, 70 RR 2d 182 (1991) ("Eatonton"), the petitioner proposed its transmitter site to be within the central city. However, in Tuck, the Commission noted

that a failure to provide complete coverage of the central city was a factor favoring the requested allotment. Given the location of the proposed transmitter and the restricted service to be provided to the central city in this case, this factor operates in Rainbow's favor.

7. The second criterion, involving size and proximity, also favors the requested allotment. Gilbert lies 17.8 miles from the city of Phoenix. In Eatonton, in contrast, the community of Sandy Springs was immediately adjacent to Atlanta. As indicated in Exhibit B, Gilbert has a population of 45,000,³ nearly three times the size of the community of Waxahachie, involved in the Tuck case. Gilbert's urbanized area population is 0.1% of the total population (assuming Census and not present populations) within the Phoenix Urbanized Area and Gilbert's urbanized land area is 2.7% of the total within the Phoenix Urbanized Area. Rainbow recognizes that its share of the Urbanized Area is small and that this is the single disadvantage in the consideration of this allotment proposal. However, Gilbert's location at the outer, rural bounds of the Urbanized Area, and its rapid growth, both serve to overcome the comparative population handicap.

8. Turning lastly to the key point of interdependence (see Tuck, 65 RR 2d at 410), there is ample evidence to support Gilbert as an independent community. This conclusion is based on the eight factors provided for in Tuck (id. at 409). These factors,

³ The 1990 Census population was 29,188. Gilbert has been experiencing dramatic growth and is expected to grow by 91% by the end of the decade (Exhibit B).

which have been drawn from the Director of Economic Development of the Town of Gilbert and other official sources, are as follows:

A. Employment Characteristics. Gilbert and its surrounding areas provide the locations for employment of Gilbert residents. According to Exhibit C, a study prepared by the Arizona State University found that 63% of the working population living in Gilbert worked in Gilbert or communities within a ten-mile radius of Gilbert. Thirteen percent of Gilbert's working population actually worked in Gilbert, where 3,500 to 4,500 people are employed (Exhibit B). Only 25% of the Gilbert workforce was actually employed in the central city.

B. Mass Media. While Gilbert has no broadcast voices, it does have print media operating in the community. The Gilbert Tribune is a daily newspaper published in Gilbert and the Gilbert Independent and New Times are weekly newspapers published in Gilbert (Exhibit D at p. 29).

C. Is Gilbert Perceived As Part of A Larger Metropolitan Area. The issue of whether the Gilbert community considers itself as integral to, or separate from, the Phoenix metropolitan area was put to the Director of Economic Development for Gilbert. His response is (Exhibit C):

In my first letter I briefly mentioned that Gilbert is a self sustaining community. I believe that statement is so important it bears repeating and even more emphasis. Gilbert is a community of 45,000 residents and growing. In order to serve that population and the added growth that is inevitable, we have planned very diligently for the future. Many of the things that were just plans and visions a few years ago are now reality. We are a full service community that provides its residents with two libraries, the full range of Police

and Fire protection, provides water and sewer services, offers a complete array of Parks & Recreation programs, and has a superior public school system. Our community leaders have worked very hard to make sure that Gilbert is a full service community and although we are technically a part of the Phoenix Metropolitan Area, we are far enough away from the heart of Phoenix that those who live and work here consider us to be very independent from the rest of the valley.

D. Local Government

Gilbert has its own government, operating under the Council-Manager form of government (Exhibit B). The government of Gilbert operates on a budget in excess of \$25 million and provides its citizens with the following services (Exhibits B and D at p. 30 - 31): police, fire, emergency medical services, planning and zoning, schools, libraries, and waste water treatment.

E. Telephone Book

Attached hereto as Exhibit E is a copy of the front page of the local telephone directory issued by U.S. West, the local exchange carrier for the area. The directory serves communities to the east and south of Phoenix, including Gilbert. The city of Phoenix is not part of this directory.

F. Local Facilities

Gilbert has extensive retail establishments and health facilities among the 900-1,000 businesses in Gilbert (Exhibit B). These facilities include grocery stores, restaurants and retail establishments (Exhibit D at p. 4, 28). The Casa Blanca Clinic is located in Gilbert, employing 350 medical personnel to provide a variety of medical services (Exhibit D at p. 28). Gilbert has excellent road access to its region (Exhibit D at p. 20).

the eight criteria from Tuck favor Rainbow's proposal. The only criteria that raise any question are the absence of an individual Gilbert telephone directory (where the local directory is a regional one exclusive of the central city) and the fact that only 13% of the residents of Gilbert work in the community (though only 25% work in the central city). Rainbow submits that the clear evidence on the six points in favor of Gilbert's status as an independent community far outweigh the mixed evidence on the other two points.

10. Taking all of this evidence into consideration, there is a clear case in favor of treating Gilbert as deserving of its first media voice. The proposed facility provides its principal service to Gilbert and not to the central city and is not located at one of the Phoenix antenna farms. The Town of Gilbert is not a mere suburb of Phoenix but is a separate and distinct community lying at its outer, rural fringes. Finally, and most important, when the eight criteria first set out in Tuck are considered, it is evident that Gilbert is truly an independent community that relies on its own business and government establishments and not the services and commercial facilities contained in Phoenix. As a result, the Petition should be given due consideration and placed on public notice for comment and appropriate action.

WHEREFORE, for the foregoing reasons, Rainbow Broadcasting, Inc. respectfully requests that the Commission reconsider the decision of the Mass Media Bureau to reject the Petition for Rulemaking and Modification of License and to reinstate that

Petition nunc pro tunc so as to provide for a rulemaking proceeding to amend Section 73.202(b) of the Commission's rules to reallocate Channel 280A from Coolidge to Channel 280C2 at Gilbert, Arizona and for the issuance of an order modifying the Station's license to change its community of license and class accordingly.

Respectfully submitted,

RAINBOW BROADCASTING, INC.

By: 

Barry A. Friedman
Semmes, Bowen & Semmes
Suite 900
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Its Attorneys

Dated: July 8, 1994

EXHIBIT A

JULES COHEN & ASSOCIATES, P.C.

CONSULTING ENGINEERS
WASHINGTON, D.C. 20036

**SUPPLEMENTAL ENGINEERING EXHIBIT
PETITION FOR RULE MAKING
RAINBOW BROADCASTING, INC.
STATION KAZR COOLIDGE, ARIZONA**

Engineering Statement

Introduction

The engineering exhibit of which this statement is part has been prepared on behalf of Rainbow Broadcasting, Inc. (Rainbow), licensee of KAZR (FM) at Coolidge, Arizona, to provide supplemental engineering data in support of Rainbow's Petition for Rule Making to modify the FM Table of Allotments in Section 73.202(b) of the Federal Communications Commission (FCC) Rules as follows.

<u>Location</u>	<u>Add</u>	<u>Delete</u>
Gilbert, Arizona	280C2	-----
Coolidge, Arizona	-----	280A

In its rule-making petition, Rainbow also proposes concomitant modification of the KAZR license to specify operation on Channel 280C2 at Gilbert, Arizona.

Proximity of Gilbert, Arizona To Phoenix and Its Urbanized Area

Using the geographic coordinates listed in the United States Geological Survey (USGS) Index to the National Atlas of the United States of America for the communities of

Gilbert¹ and Phoenix², Arizona, the calculated distance between Gilbert and Phoenix is 28.7 kilometers.

The Bureau of the Census publication 1990 CPH-2-4, entitled Population and Housing Counts, Arizona, reports that the 1990 population within Gilbert town in Maricopa County, Arizona, is 29,188 persons, and that there are 70.3 square kilometers of land area within Gilbert. Not all of the population and land area within the town of Gilbert is within the Phoenix Urbanized Area. Publication 1990 CPH-2-4 and the Bureau of the Census map entitled Phoenix, Arizona Urbanized Area Boundary Map (1990) indicate that a portion of Gilbert town, 28,550 of the total 29,188 persons (97.8%) and 51.5 square kilometers of the total 70.3 square kilometers of land area (73.3%), is within the Phoenix Urbanized Area. Publication CPH-2-4 also indicates that there are 2,006,239 persons and 1,919.4 square kilometers of land area within the Phoenix Urbanized Area. That part of Gilbert which is within the Phoenix Urbanized Area is 0.1 percent of the total population and 2.7 percent of the total land area within the Phoenix Urbanized Area.

Figure 1 of this engineering exhibit is a portion of the Bureau of the Census map entitled Arizona County Subdivision Outline Map (1990) on which the Phoenix Urbanized Area, as detailed on the Bureau of the Census Phoenix, Arizona Urbanized Area Boundary Map (1990), is superimposed. The Gilbert Channel 280C2 reference site and predicted coverage contours, which were calculated assuming maximum permissible Class C2 facilities of 50 kilowatts effective radiated power (ERP) at antenna radiation center height above average terrain (HAAT) of 150 meters at the Gilbert reference site, are plotted on Figure 1. Figure 1 shows that while the assumed Gilbert Channel 280C2 facilities provide the required city grade coverage (70 dBu or greater signal strength) of Gilbert, the assumed Gilbert Channel 280C2 70 dBu contour does not

¹ 33° 21' 12" North Latitude, 111° 47' 24" West Longitude (NAD 1927)

² 33° 27' 18" North Latitude, 112° 04' 24" West Longitude (NAD 1927)

JULES COHEN & ASSOCIATES, P.C.

CONSULTING ENGINEERS
WASHINGTON, D.C. 20036

Engineering Statement
KAZR, Coolidge, Arizona

Page 3

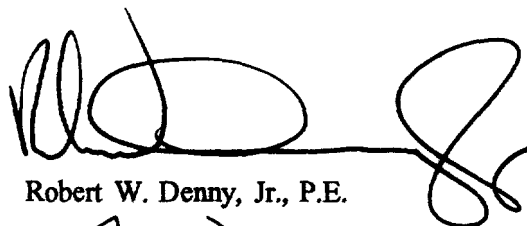
reach the city of Phoenix boundary, and the assumed Gilbert Channel 280C2 60 dBu contour encompasses neither the entire city of Phoenix nor the entire Phoenix Urbanized Area.

As illustrated on the map of Figure 2, the required distance separation between KTWC(FM), licensed to operate on Channel 278C at Glendale, Arizona, and proposed Channel 280C2 allotment at Gilbert, precludes the location of a fully spaced Gilbert Channel 280C2 transmitter site nearer to Phoenix than the specified reference site.

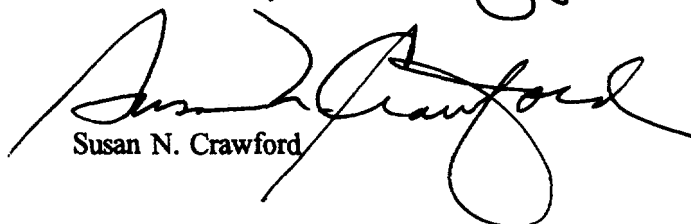
Permissible Gilbert Channel 280C2 Site Zone

The map used in preparing Figure 2 of this engineering exhibit is a portion of the USGS Mesa, Arizona, 1:250,000-scale topographic map on which the permissible Gilbert, Arizona, Channel 280C2 site zone, calculated assuming that the proposal contained in Mass Media Docket Number 93-69 which proposes to substitute Channel 276C2 for Channel 279A at San Carlos, Arizona, and Channel 279A for Channel 276A at Oracle, Arizona, will be granted, is shown. Because of its proximity to the Superstition Mountains and the impossibility of providing required city grade signal strength over Gilbert from behind a mountain range, the Gilbert Channel 280C2 permissible site zone shown on Figure 2 has been foreshortened considerably to the northeast from its calculated location.

We declare under penalty of perjury that the foregoing is true and correct. Executed on July 7, 1994.

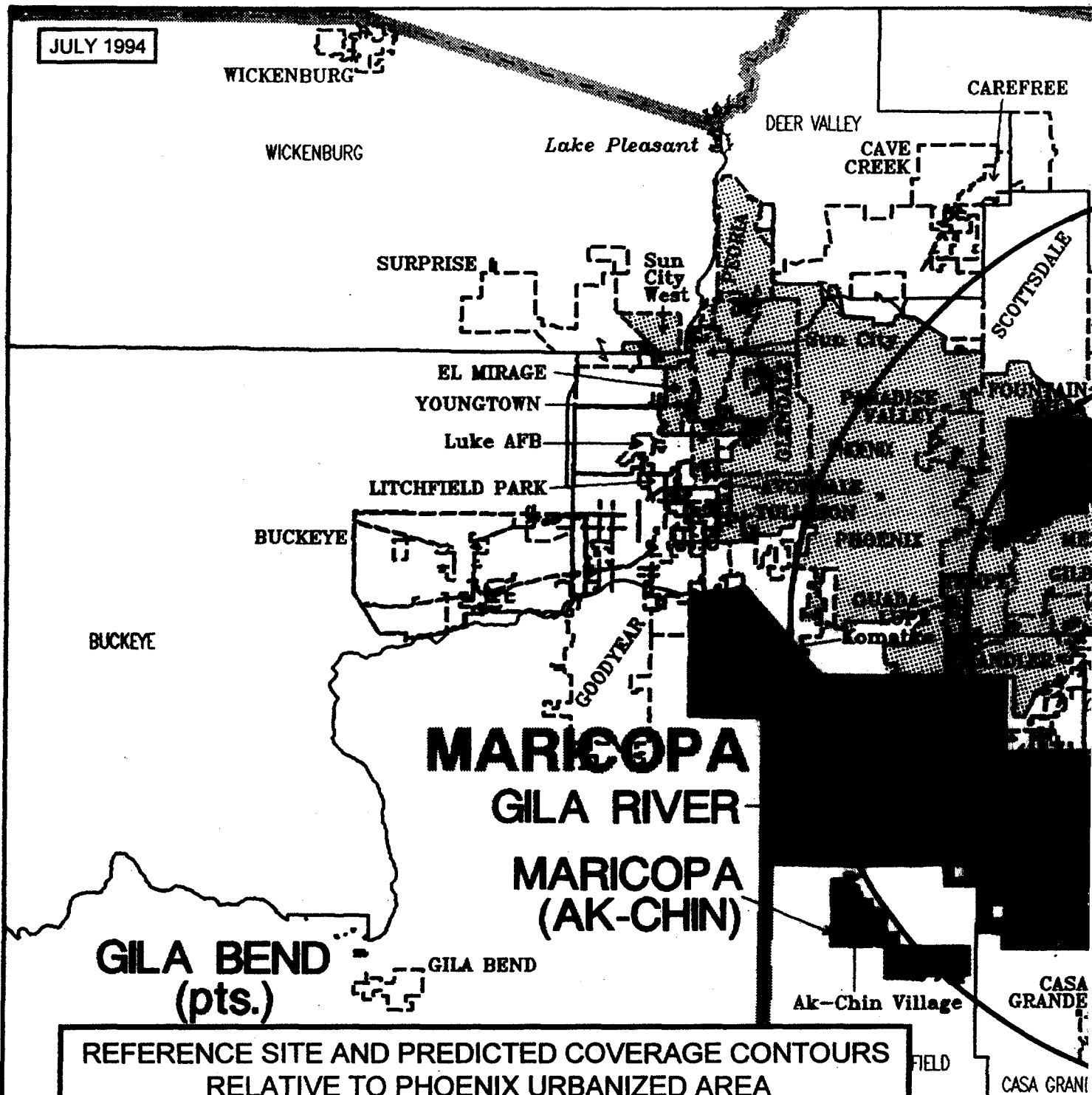


Robert W. Denny, Jr., P.E.



Susan N. Crawford

JULY 1994

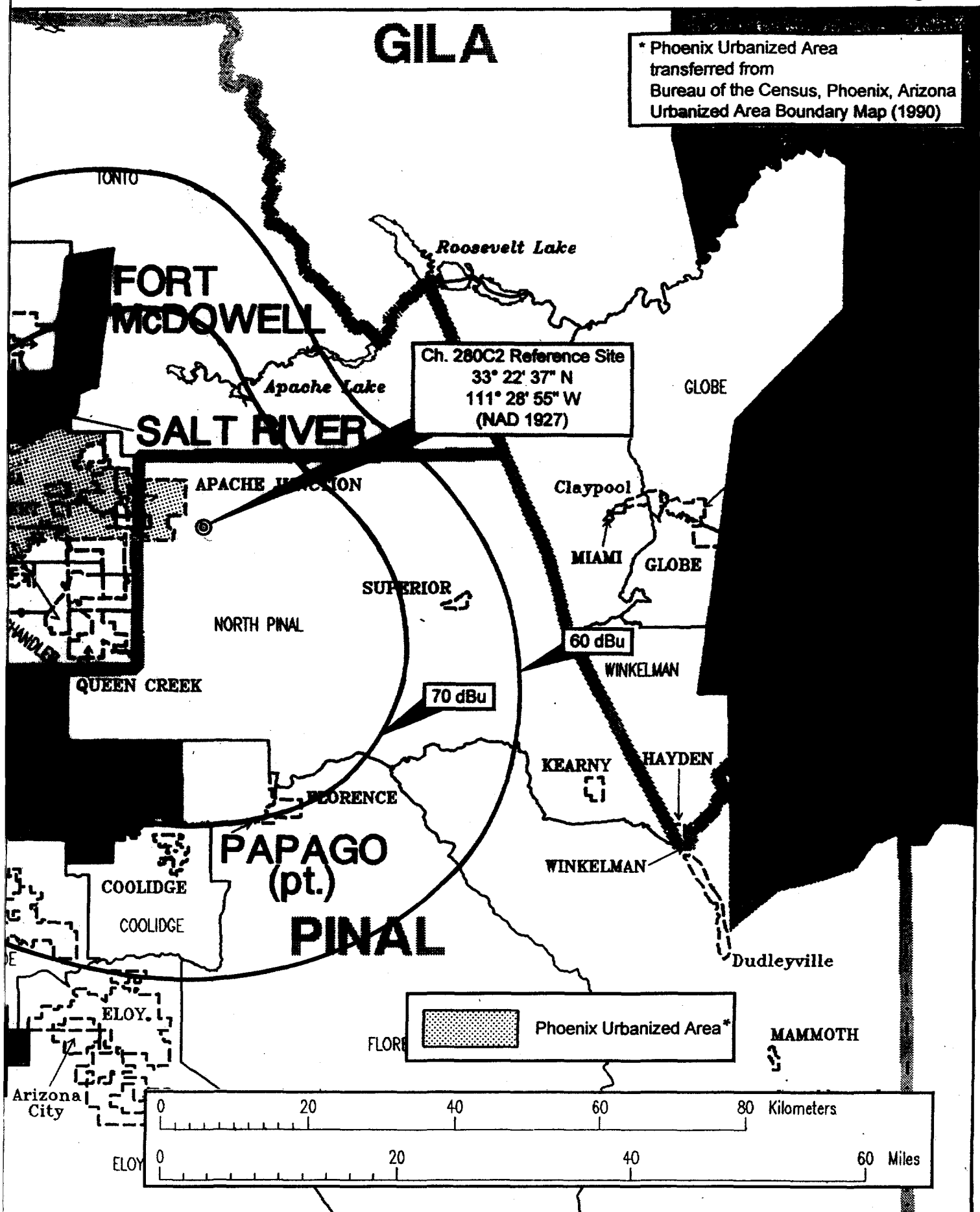


REFERENCE SITE AND PREDICTED COVERAGE CONTOURS
RELATIVE TO PHOENIX URBANIZED AREA

RAINBOW BROADCASTING, INC.
LICENSED STATION KAZR COOLIDGE, ARIZONA
CH 280A 6.0 KW 91 METERS
ASSUMED STATION KAZR GILBERT, ARIZONA
CH 280C2 50 KW 150 METERS

Jules Cohen & Associates, P.C. Consulting Engineers

Figure 1



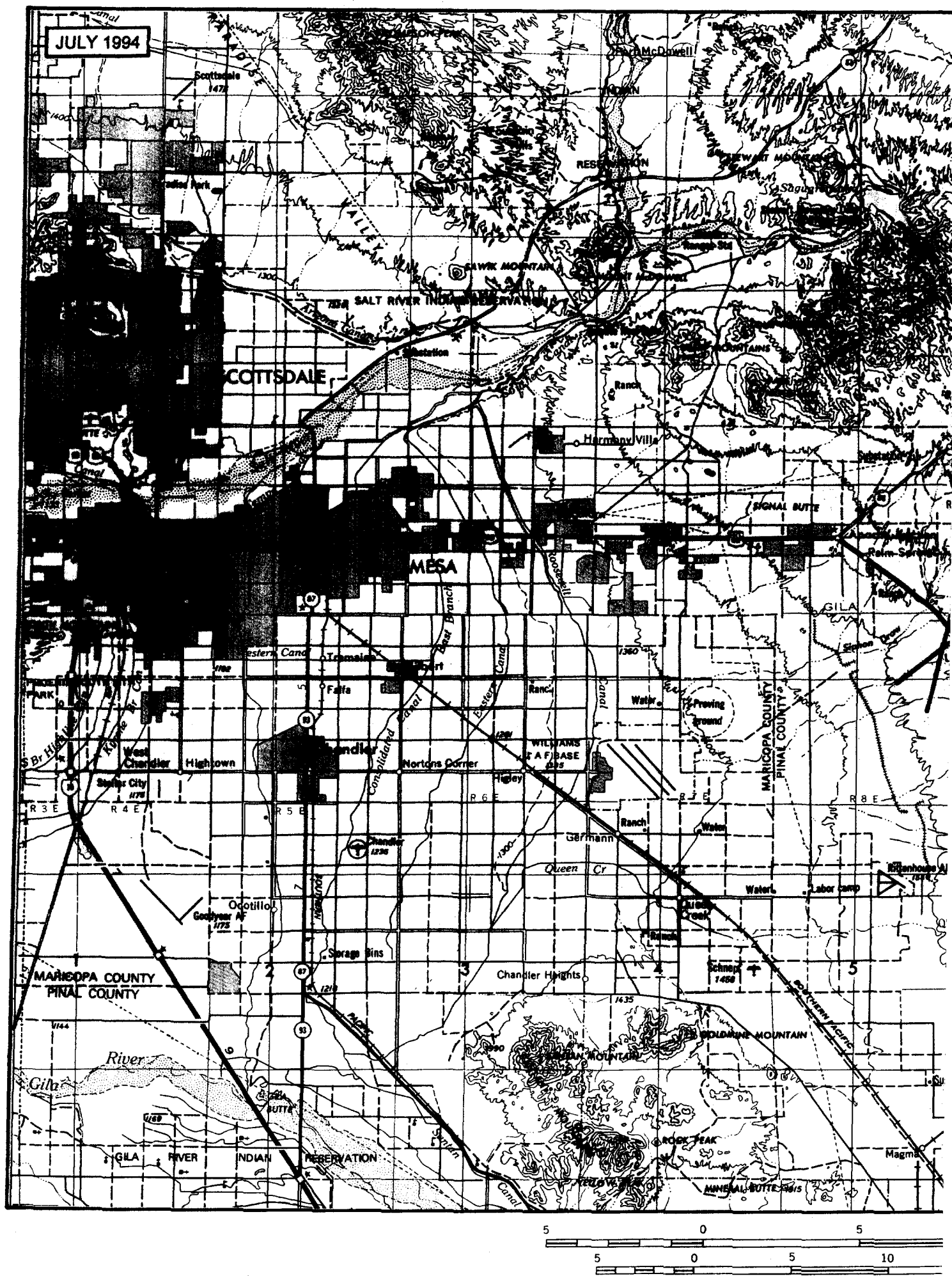


Figure 2

104.6 km from LIC. KTWC
Ch. 278C Glendale, AZ

105.6 km from PROP. KLQB
Ch. 279A Oracle, AZ

Approximate Limit for Providing
70 dBu or Greater Signal Strength
To All of Gilbert.

Ch. 280C2 Reference Site
33° 22' 37" N
111° 28' 55" W
(NAD 1927)

*Assuming the substitution of CH. 278C2 for CH. 279A
at San Carlos, AZ. and the substitution of CH. 279A
for CH. 276A at Oracle, AZ, as proposed in MM
Docket No. 93-89 (RM-8106).

PERMISSIBLE SITE ZONE *

RAINBOW BROADCASTING, INC.		
LICENSED STATION KAZR	COOLIDGE, ARIZONA	
CH 280A	6.0 KW	91 METERS
ASSUMED STATION KAZR	GILBERT, ARIZONA	
CH 280C2	50 KW	150 METERS

Jules Cohen & Associates, P.C. Consulting Engineers

10 15 20 Statute Miles

15 20 25 30 Kilometers

EXHIBIT B



*A Community
of Excellence*

June 24, 1994

Jayson Brentlinger
Rainbow Broadcasting Inc.
KAZR ROCK 104
4545 North 36th Street, # 203
Phoenix, Arizona 85018

Dear Jay,

I appreciate the status report you gave me on the progress you are making in locating your radio station to Gilbert. We are very much looking forward to having "our own" station to serve the community. At the meeting you asked me to provide you with some community information and I am pleased to do so. I have also enclosed an information packet that includes a town map and the 1994 Gilbert Community Profile.

Gilbert is a rapidly growing community located 15 miles southeast of Phoenix. Incorporated in 1920, Gilbert has seen its population mushroom from a small farming community of 500 people to a thriving, self sustaining community of 45,000 (See page 3 of Community Profile for breakdown of population growth). Since 1980 the community has experienced a growth rate of 676% and is expected to grow by another 91% by the year 2000. We have added over 16,000 people since the 1990 U.S. Census alone. Gilbert's planning area encompasses approximately 53 square miles, only half of which is developed at this time, which means that there is still plenty of room to grow.

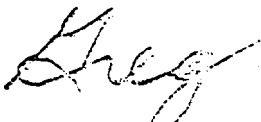
As you know, the Town of Gilbert offers the full breadth of community services including a Parks and Recreation Department, a Senior Citizens Center, a Community Center, two libraries, a Public Works facility, a waste water treatment plant, with a new, state-of-the-art surface water treatment plant under construction. Based on the interviews that you did with the Mayor, the Police and Fire Chiefs, and myself, you know that Gilbert operates under the Council-Manager form of government, that our 1994 Operating Budget exceeded \$25 million, and that we have a full compliment of community development services. The nearly 60 Police

officers and 25 fire fighters are just a fraction of the nearly 300 people employed by the Town of Gilbert. The interviews that you aired with the above mentioned departments were very much appreciated and that is exactly the type of community service we look forward to when your station moves here in the future. To the best of my recollection, I think your station is probably the first in the Phoenix metro area to take the time to speak with our government officials and air them on a public affairs show. I think all too often the outlying communities get overlooked and overshadowed by the Phoenix stations (radio and TV) and that is really a disservice to the residents of Gilbert. We had the same type of situation occur before we had our own daily newspaper, the Gilbert Tribune. Now we get much better coverage of the events impacting Gilbert. In addition to the Tribune we also have a weekly paper, the Gilbert Independent, which is distributed free of charge to all of our residents. I think the print media is covered, now it's time that we receive some air time.

There are approximately 900-1,000 businesses in Gilbert itself and thousands more in the surrounding communities. Each of those communities has its own radio station and of course the tendency is to focus on the needs of those cities and ignore the needs of Gilbert. The businesses in Gilbert employ between 3,500-4,500 people and we are adding about 150 new businesses per year. The Gilbert Unified School District alone employs 1,400 workers and has about 14,000 students in their schools with more on the way. There is a strong partnership between the Gilbert Chamber of Commerce and the Town of Gilbert, one which works together to attract and retain business and industry. The Gilbert Town Council also recently approved our new General Plan which is a blueprint for future development.

I have enclosed a number of pieces of information for your files-a 1994 Gilbert Community Profile, *Ideas Into Action*, the 1993-94 Gilbert Economic Development Strategy, a Municipal Services Directory, a business list and a Gilbert Street Map. Gilbert is truly on the grow and we're happy that KAZR wants to be part of that growth. Please call me if I can be of any further assistance in your site selection process. We look forward to having Gilbert be the city of license for KAZR.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Greg', with a stylized flourish at the end.

Gregory M. Tilque, C.E.D.
Director of Economic Development

EXHIBIT C



*A Community
of Excellence*

June 27, 1994

Jayson Brentlinger
Rainbow Broadcasting Inc.
KAZR ROCK 104
4545 North 36th Street, # 203
Phoenix, Arizona 85018

Dear Mr. Brentlinger,

I am pleased to hear that the information I provided you in my letter of June 24, 1994 was beneficial to you in preparing for your presentation to the FCC. As a follow-up to that letter and in answer to your comments regarding its contents, please allow me to elaborate on a couple of points.

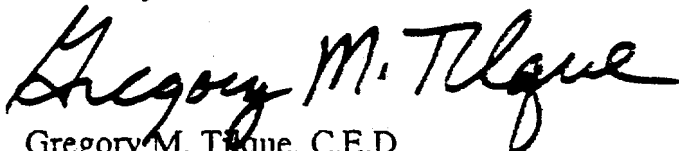
A study recently completed by Arizona State University shows that of the nearly 15,000 total workers that live in Gilbert, 13% of them actually work in our community, 25% of them commute to Phoenix, 9% work in Chandler, 15% in Tempe, and 26% of them work in Mesa. In other words, 63% of our residents who are in the workforce either work in Gilbert or within a ten mile radius of Gilbert.

In my first letter I briefly mentioned that Gilbert is a self sustaining community. I believe that statement is so important that it bears repeating and even more emphasis. Gilbert is a community of 45,000 residents and growing. In order to serve that population and the added growth which is inevitable, we have planned very diligently for the future. Many of the things that were just plans and visions a few years ago are now reality. We are a full service community that provides its residents with two libraries, the full range of Police and Fire protection, provides water and sewer services, offers a complete array of Parks & Recreation programs, and has a superior public school system. Our community leaders have worked very hard to make sure that Gilbert is a full service community and although we are technically a part of the Phoenix Metropolitan Area, we are far enough away

from the heart of Phoenix that those who live and work here consider us to be very independent from the rest of the valley. As further proof of our independent stature, I am providing a copy of the cover of the local telephone directory.

I hope this addendum provides you with the level of detail you need to proceed with your presentation. If you require further detail please call me at (602) 545-6865. Thank you for your continued interest in Gilbert.

Sincerely,

A handwritten signature in cursive script that reads "Gregory M. Tigue". The signature is written in dark ink and is positioned above the printed name and title.

Gregory M. Tigue, C.E.D.
Director of Economic Development

EXHIBIT D

1994 COMMUNITY PROFILE



GILBERT ARIZONA



TOWN OF GILBERT COMMUNITY PROFILE

TABLE OF CONTENTS

	Page #
PHYSICAL and DEMOGRAPHIC	
Location	2
Climate	3
Population/Demographics	3
EMPLOYMENT	
Major Employers	4
Labor Market	4
Wage and Salary Levels	5
EDUCATION	
Primary/Secondary	6
Higher Education	8
BUSINESS RESOURCES	
Business Support Services	12
Financial Assistance	14
Operating Environment	16
Incentives	17
MARKET ACCESS	
Air Travel	18
Trucking	20
Rail	20
Map of Industrial Parks	21
UTILITIES	
Electric	22
Natural Gas	23
Sewer	23
Water	24
Communications	25
COMMUNITY RESOURCES	
Housing	26
Medical Facilities	26
Cultural/Recreational Opportunities	27
Community Services	28
Media	29
TOWN OF GILBERT	
Local Government	30
Operating Budget	30
Emergency Services	30
Planning & Zoning	30
General Plan	31
GOVERNMENT	
Maricopa County Government	32
Arizona State Legislators	32
U.S. Legislators	32
Listing of Frequently Contacted Governmental Agencies	33
Taxes	
Property	34
Sales	34
Personal	34
Corporate	34
MEETING THE NEEDS OF TOMORROW	36